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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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J. Aaron Bly

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10/21/2005

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EXAMINER

HEWITT II, CALVIN L

ART UNIT

PAPER NUMBER

3621

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/995,287

Applicant(s)

BLY ET AL.

Examiner

Calvin L. Hewitt II

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 36-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36-62 is/are rejected.
- 7) ☒ Claim(s) 43,44,52,53,61 and 62 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11-26-01, 4-28-03, 5-25-05

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### ***Status of Claims***

1. Claims 36-62 have been examined.

### ***Claim Objections***

2. Claims 43, 44, 52, 53, 61, and 62 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 43 recites "determining if the question is required to be prompted". However, claim 36, from which claim 43 depends, specifies prompting a question to a user. Hence, claim 43 does not further limit its parent claim as it makes optional a required limitation of claim 36. Claims 44, 52, 53, 61, and 62 are also objected to as it recites similar language.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 36-45 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

For subject matter of a claimed process to be statutory, the process must be limited to a practical application of the abstract idea or mathematical algorithm in the technological arts (MPEP 2100-18, *Alappat*, 33 F.3d at 1543, 31 USPQ2d at 1556-57, *Diamond v. Diehr*, 450 U.S. at 192, 209 USPQ at 10, *Alappat* 33 F.3d at 1569, 31 USPQ2d at 1578-79, *O'Reilly v. Morse*, 56 U.S. (15 How.) at 114-19)). Regarding "practical application", a claim is limited to a practical application when the method, as claimed, produces a concrete, tangible and useful result; i.e., the method recites a step or act of producing something that is concrete, tangible and useful (MPEP 2100-18, *AT&T*, 172 F.3d at 1358, 50 USPQ2d at 1452). Therefore, as Applicant's claimed process is independent of a wireless communication system and merely "receives", "prompts" and "stores", the process does not produce a practical application in the computer related arts (MPEP 2100-17, 18).

Claims 37-45 are also rejected as they depend from claim 36.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 36-62 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant's Specification discloses a wireless communications system having wireless infrastructure and wireless device (paragraph [0037-0042]). However, this system is only applied to the monitoring of assets (paragraphs [0076-0079]) therefore, Applicant does not have support for the asking of questions and the receiving and storing of responses using said wireless system (e.g. wireless device and infrastructure) (claims 36, 46 and 55). Examiner also does not find support for an identifier having a "temporal relationship to other identifiers assigned to other responses" (claim 38).

Claims 37-45, 47-54, and 56-62 are also rejected as they depend from claims 36, 46 and 55, respectively.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 36-62 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Claim 36 recites the limitation "the asset" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claims 37-45 are also rejected as they depend from claim 36.

b. Claim 36 is directed to a method "utilizing a wireless communication system having a wireless infrastructure and a wireless device" however, the second claimed limitation is directed to performing a "prompting" without utilizing the wireless communication system as the action is performed "independent of an active communication link between the wireless infrastructure and the wireless device". Claims 46 and 55 recite similar language. Therefore, it is not clear to one of ordinary skill what is Applicant's claimed method and the scope of said method.

Claims 37-45, 47-54, and 56-62 are also rejected as they depend from claims 36, 46 and 55, respectively.

c. Claim 38 recites a "temporal relationship to other identifiers assigned to other responses" however, it is unclear what Applicant means by the term "temporal". On the other hand, Applicant's Specification discloses "recertification", hence for purposes of examination, temporal is

being interpreted in the context of re-certification (Specification, paragraph [0096]).

d. Claim 39 recites "receiving a new question by the wireless device from the wireless infrastructure and updating the questions". To one of ordinary skill, this is unclear as a "new" question replaces an "old" question one, while updating a question may result in only a slight modification.

e. Claim 43 recites "determining if the question is required to be prompted". However, claim 36, from which claim 43 depends, specifies prompting a question to a user. Therefore, according to the language of claim 36, it has already been determined that the operator has answered in the affirmative regarding "prompting". Claims 44, 52, 53, 61, and 62 are also rejected as each recites similar language to claim 43.

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 36-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swor et al., U.S. Patent No. 6,148,297 in view of Hoehn-Saric et al., U.S. Patent No. 5,915,973.

As per claims 36, 43, 44, 46, 52, 53, 55, 61 and 62, Swor et al. teach a worker certification system comprising receiving a response and storing a response to a question (column 5, lines 33-45) utilizing a wireless communication system (i.e. wireless device and infrastructure) (column 4, lines 45-52). However, Swor et al. do not specifically disclose receiving an identifier from a test taker. Hoehn-Saric et al. teach a test taking system where the system receives an identifier from a test taker (column 8, lines 23-29). Hoehn-Saric also teach prompting a question independent of an active communication link as the questions are downloaded to and stored by the test taking device (column 8, lines 52-56). Therefore, it would have been obvious to one of ordinary skill to combine the teachings of Swor et al. and Hoehn-Saric et al. to validate the test taker in order to prevent fraud ('973, column 8, lines 25-55).

As per claim 37, 47 and 56, Swor et al. teach a wireless communication system (column 4, lines 45-52) for certifying workers comprising the storing of responses to questions (column 5, lines 33-45). In wireless communication, it is well known that data cannot be communicated successfully from one device to another unless there is a connection between the two. Swor et al. discloses a scoring module for



evaluating responses (column 5, lines 40-45). However, Swor et al. do not specifically recite the location of said module. Hoehn-Saric et al. teach forwarding completed questions to a central location (column/line 8/65-9/5). Therefore, it would have been obvious of one of ordinary skill to combine the teachings of Swor et al. and Hoehn-Saric et al. in order to reduce the prospects of test taker fraud by evaluating the responses at a remote location.

As per claim 38, Swor et al. teach certification (column 5, lines 35-45) and Hoehn-Saric et al. teach associating and storing identifiers with responses (column 9, lines 37-58). Regarding an identifier having "temporal relationship to other identifiers", this is non-functional descriptive material as the type of identifier does not alter how Applicant's process steps are to be performed to achieve the utility of the claimed invention (MPEP 2100-22). Nonetheless, it is well known to those of ordinary skill to use identifiers for establishing a temporal relationship between responses.

As per claim 39, 48, and 57, the Examiner takes Official Notice of the updating of exam questions, for example by changing questions, in order to introduce new topics, emphasize or de-emphasize material, and the memorization of questions.

As per claims 40-42, 45, 49-51, 54, 58-60, Swor et al. and Hoehn-Saric et al. disclose examinations (i.e. tests). Therefore, claim language that specifies the type of questions is non-functional descriptive material

as the type of questions does not alter how Applicant's process steps are to be performed to achieve the utility of the claimed invention (MPEP 2100-22).

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- American Backflow Prevention Association, "Rules governing the certification of backflow prevention assembly tester" disclose issuing notices for recertification (i.e. identifiers associated with a response, where identifiers are in a temporal relationship with other identifiers associated with the same user)
- Goldman et al. disclose testing of operators of assets
- Hollingsworth teach a computerized employee certification and training system

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Calvin Loyd Hewitt II whose telephone number is (571) 272-6709. The Examiner can normally be reached on Monday-Friday from 8:30 AM-5:00 PM.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James P. Trammell, can be reached at (571) 272-6712.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

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Washington, D.C. 20231

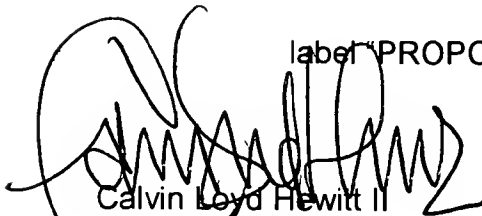
or faxed to:

(571) 273-8300 (for formal communications intended for entry and after-final communications),

or:

(571) 273-6709 (for informal or draft communications, please

label "PROPOSED" or "DRAFT")

A handwritten signature in black ink, appearing to read "Calvin Lloyd Hewitt II", is written over a circular stamp. The signature is fluid and cursive.

October 19, 2005